

Ms. Sandra Bruner
Manager, Corporate Telecommunications
Administration
Who's Calling
200 Quality Circle
College Station, TX 77845

May 13, 2021

Licensee: Who's Calling
Waiver and Refund Request: FY 2017 Late Payment
Penalty
Disposition: Dismissed and Denied (47 U.S.C. § 159(c)
and (d),¹ 47 CFR §§ 1.1160, 1.1164, 1.1166 and 1.1910)
Date Request Filed: October 26, 2017
Date Paid: Final payment February 18, 2021
Fee Control No.: RROG-2017-16441

Dear Ms. Bruner:

This responds to the request of Who's Calling for a waiver and refund of the penalty assessed against it for failure to timely pay its (FY) 2017 regulatory fee (Request)². For the reasons stated below, we dismiss and deny the Request.

Under 47 U.S.C. § 159 and the Commission's implementing rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,³ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴

Each year, the Commission establishes the final day on which payment must be received before it is considered late, i.e., a deadline after which the Commission must assess the 25 percent penalty for late payment. The deadline for paying FY 2017 regulatory fees was September 26, 2017.⁵

Who's Calling asks that the Commission waive and refund the late payment penalty on the grounds that it did not receive notice of the due date and instructions for payment of the FY 2017 fees.⁶

¹ 47 U.S.C. § 159(c) and (d) are now codified at 47 U.S.C. § 159A(c) and (d).

² Letter from Sandra Bruner, Manager, Who's Calling, 200 Quality Circle, College Station, TX 77845, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th St., SW, TW-2B204, Washington DC 20554 (Oct. 17, 2017, *rec'd* Oct. 26, 2016) (Request).

³ 47 U.S.C. §159(a); 47 CFR § 1.1151.

⁴ 47 U.S.C. §159(c), now codified at 47 U.S.C. §159A(c); 47 CFR § 1.1164.

⁵ *Fee Filer is Open for Payment of FY 2017 Regulatory Fees*, Public Notice (Sept. 5, 2017), <https://www.fcc.gov/document/fee-filer-payment-system-open>. Although the Commission later extended the deadline to September 29, 2017 for regulatees in certain states and territories affected by Hurricanes Harvey, Irma and Maria, the extended deadline did not apply to Who's Calling. *See Regulatory Fee Filing Window for Those Regulatees Affected by Hurricane Maria is Extended to Friday, September 29, 2017*, Public Notice, 32 FCC Rcd 7306 (OMD 2017).

⁶ Request.

The Request assumes that the Commission received payment of the FY 2017 fee and penalty before Request was filed. In fact, the FY 2017 fee and penalty were not paid when the Request was filed.⁷ Accordingly, we dismiss the Request pursuant to the Commission's "red light" rule.⁸

As an alternative and independent basis for our decision, we also deny the Request on the merits. Each year, in advance of the deadline, the Commission publishes multiple notices in which it announces the payment deadline for regulatory fees due that year and provides detailed payment instructions. In FY 2017, the Commission again published multiple notices before the deadline, beginning on September 5, 2017.⁹ Who's Calling therefore had ample notice of the payment deadline.

When we evaluate waiver requests, we consider whether the waiver request establishes the existence of bank error¹⁰ or presents legal grounds or clear mitigating circumstances¹¹ to waive collection of the fee debt. The Request does not and is therefore denied.

If Who's Calling has any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,

James Lyons

James Lyons
Deputy Chief Financial Officer

⁷ According to Commission records, Who's Calling attempted ACH payment of the FY 2017 regulatory fee and 25% penalty on October 4, 2017 but its bank declined to honor the debit request. Thereafter we referred the delinquent debt to the U.S. Department of Treasury for collection. According to Treasury records, the debt was recently paid in full. We therefore treat the Request as a waiver and refund request under 47 CFR §§ 1.1160 and 1.1166.

⁸ 47 CFR §§ 1.1164 and 1.1910.

⁹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7057, 7076-7077, paras. 52-54 (2017) (payment instructions described); *Fee Filer is Open for Payment of FY 2017 Regulatory Fees*, Public Notice (Sept. 5, 2017), <https://www.fcc.gov/document/fee-filer-payment-system-open> (payment deadline announced); *Payment and Procedures for Fiscal Year 2017 Regulatory Fees*, Public Notice (Sept. 6, 2017) (notice of payment deadline and payment instructions), *Effective Date of FY 2017 Regulatory Fees and Multi-Year Wireless Fees*, Public Notice (Sept. 22, 2017), <https://www.fcc.gov/document/effective-date-fy-2017-regulatory-fees> (payment deadline).

¹⁰ 47 CFR § 1.1164.

¹¹ See *Sitka Broadcasting Co., Inc.*, Memorandum Opinion and Order, 70 FCC 2d 2375, 2378, para. 6 (1979), citing *Lowndes County Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, Memorandum Opinion and Order, 23 FCC 2d 868 (1970); see also, *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).